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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 ROY D. MORAGA,

8 Plaintiff(s),

9 v.

10 STEVE WOLFSON, et al.,

11 Defendant(s).

Case No. 2:16-CV-287 JCM (VCF)

ORDER

12
13 Presently before the court is the matter of *Moraga v. Wolfson et al.*, case number 2:16-cv-
14 00287-JCM-VCF.

15 On November 7, 2019, the court received a referral notice from the Ninth Circuit Court
16 of Appeals, referring this matter to the court “for the limited purpose of determining whether *in*
17 *forma pauperis* status should continue for this appeal or whether the appeal is frivolous or taken
18 in bad faith.” (ECF No. 24).

19 **I. Background**

20 On February 11, 2016, Moraga filed an application to proceed *in forma pauperis* and a
21 complaint, generally alleging that his due process rights were violated when the state of Nevada
22 denied as untimely his request for a new genetic marker analysis. (ECF No. 1, 1-1). The court
23 granted the application to proceed *in forma pauperis* but dismissed the complaint with leave to
24 amend. (ECF Nos. 3, 9). On February 1, 2017, Moraga filed his first amended complaint,
25 alleging that the physical evidence related to his criminal conviction was wrongfully withheld
26 from him. (ECF No. 10).

27 On January 22, 2019, Magistrate Judge Cam Ferenbach recommended that this action be
28 dismissed with prejudice because Moraga failed to state a claim for relief. (ECF No. 12). On

1 March 4, 2019, the court adopted the report and recommendation and dismissed this action with
2 prejudice. (ECF No. 14). In response, Moraga filed a motion for reconsideration on March 13,
3 2019. (ECF No. 16).

4 On July 30, 2019, Moraga filed a notice of appeal (ECF No. 18) as to the court's order
5 adopting the report and recommendation (ECF No. 14). The Ninth Circuit subsequently entered
6 an order on August 21, 2019, directing this court to determine "whether appellant's March 13,
7 2019 filing falls within those [motions] listed in Federal Rule of Appellate Procedure 4(a)(4)
8 and, if so, whether the motion should be granted or denied." (ECF No. 22). On October 10,
9 2019, the court (1) found that Moraga's March 13, 2019, motion for reconsideration (ECF No.
10 16) was timely filed pursuant to Federal Rule of Civil Procedure 60(b), and (2) denied Moraga's
11 motion for reconsideration. (ECF No. 23).

12 Now, the Ninth Circuit has referred this case to the court for the limited purpose of
13 determining if Moraga's *in forma pauperis* status should continue for his appeal. (ECF No. 24).

14 **II. Legal Standard**

15 28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken *in forma pauperis* if
16 the trial court certifies in writing that it is not taken in good faith." The good faith standard is
17 satisfied when an individual "seeks appellate review of any issue not frivolous." *Coppedge v.*
18 *United States*, 369 U.S. 438, 445 (1962). For the purposes of section 1915, an appeal is frivolous
19 if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325
20 (1989). A district court may revoke an individual's *in forma pauperis* status for his appeal if it
21 finds that the appeal would be frivolous. *See Hooker v. American Airlines*, 302 F.3d 1091, 1092
22 (9th Cir. 2002).

23 **III. Discussion**

24 For the reasons set forth in the court's March 4, 2019 order adopting the magistrate
25 judge's recommendation to dismiss this case with prejudice (ECF No. 14), the court finds that
26 any appeal of that order would not be taken in good faith because the issues therein lack any
27 arguable basis in law or fact. The court will therefore revoke Moraga's *in forma pauperis* status.

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James C. Mahan
U.S. District Judge